

Opinion No. 16-1837

June 23, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. John W. Corbett, Mountainair, New Mexico.

State land desired for cemetery purposes must be purchased.

OPINION

{*400} I have received your letter of the 20th instant, relative to securing title to a cemetery on a school section, asking particularly whether or not, under Sections 561 and 562 of the Codification of 1915, the Commissioner of Public Lands may grant the land for cemetery purposes which has been used as a cemetery for some years prior to January 6, 1912.

I do not believe that the Commissioner can give any deed for a part of a school section under said Section 561, for two reasons, first, the statute does not authorize him to give any deed, but merely declares that the land shall not be sold by the Commissioner. and second, it would be a diversion of the land to a different purpose from that for which it was granted to the State by Congress. These sections were granted to the State "for the support of the common {*401} schools," and Congress declared that the disposition of any of the land granted for any object other than that for which the particular lands were granted, should be deemed a breach of trust, and it was made the duty of the Attorney General of the United States to prosecute, in the name of the Government, in its courts, such proceedings as might from time to time be necessary to enforce the provisions of the Act of Congress relative to the application and disposition of the said lands. In other words, I am firmly convinced that the Act of March 13, 1913, which re-appears as Sections 561 and 562 of the Codification, was beyond the lawful power of the legislature. By Section 9 of Article XXI of the Constitution we consented to all of the provisions of the Act of Congress concerning lands granted or confirmed to the State so that the provisions of the Act of Congress on this subject are to be considered as embodied in the Constitution.

You further ask whether there is any conflict between Section 561 and Section 5241. If Section 561 could be considered valid it would take effect over the other section, as it was passed at a later date. I believe that the only valid statutory authority to the Commissioner with regard to lands for cemetery purposes is that which is contained in Section 5241. I find, upon inquiry, that the Commissioner has taken this view, and that notwithstanding Section 561, he has required people who desired land for cemetery purposes to buy the same at a public sale in the same way that other state lands are purchased, and I am compelled to say that I believe his course is the only correct one.